BP (M) SDN. BHD.

v.

HK GN PETROCHEM (M) SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
VC GEORGE J
[CIVIL SUIT NO. C 3532 OF 1985]
23 JANUARY 1986

CIVIL PROCEDURE: *Goods sold and delivered - Ex parte interlocutory injunction - Order 14 of Rules of the High Court 1980 - Application to set aside injunction - 2 months delay - Adequacy of explanation.*

The plaintiffs' claim for a sum of money being the price of goods sold and delivered. Pending the hearing of the action, the plaintiffs obtained an *ex parte* interlocutory injunction for the attachment of monies not exceeding the said amount claimed held in the defendants account with the Perwira Habib Bank as well as and within the same limit monies owing to the defendants by various named trade debtors of theirs. The day after this order was obtained, the defendants entered an appearance. A statement of defence and counterclaim was subsequently filed, whereby the defence denied all allegations in the plaintiffs' writ. It was also stated in the counterclaim that there was a sum of money owing by the plaintiffs to the defendants. The instant application is by the defendants to set aside the *ex parte* interlocutory order.

Meanwhile, the plaintiffs took out and obtained an O. 14 application and final judgment was entered against the defendants for RM 1,443,756.62. The defendants appealed against this order but that appeal had not yet been heard when the instant application came up for disposal.

Held:

[1] The defendants only filed their application to set aside the injunction two months after they were served with it. There was no adequate explanation given as to the reason for this delay.

[2] Furthermore, the affidavits on which the defendants relied on complained only of the hardship suffered by the defendants as a result of the injunction. The basis on which the plaintiffs sought and obtained the injunction was not challenged at all by the defendants. In the circumstances, the defendants' application had to be dismissed.

[Application dismissed with costs.]

Legislation referred to:
Rules of the High Court 1980, O. 14

[**Editor's Note:** A notice of appeal was filed on 5 November 1985 under reference Supreme Court Civil Appeal 365 of 1985]

JUDGMENT

VC George J:

The writ in this action was caused to be issued on 3 July 1985. The plaintiffs' claim is for RM 2,116,760.64 being the price of goods sold and delivered.

On the 6 July 1985 the plaintiffs caused an *ex parte* summons in chambers to issue, on a certificate of urgency, for the attachment pending the hearing of the action of any monies not exceeding the said amount claimed held in the defendants' account with the Perwira Habib Bank as well as and within the same limit monies owing to the defendants by various named trade debtors of theirs. The ex parte interlocutory order sought was given to the plaintiffs on 8 July 1985. The instant application is by the defendants to have the said *ex parte* order set aside.

Meanwhile the writ had been served on the defendants who entered an appearance on 9 July 1985. A statement of defence and counterclaim dated 20 July 1985 was filed on 22 July 1985. The defence is by way of a blanket denial of all allegations. That goods were sold and delivered, that there was an amount owing and that reminders for the payment of the amount had been sent, were all denied without any qualification. The cause of action in respect of the counterclaim or its basis was not disclosed. It was simply stated to be "RM 604,437.34 being the sum owing by the plaintiff to the defendant, particulars of which the plaintiff is aware of".

On 29 July 1985 the plaintiffs took out the O. 14 application which was heard on 17 August 1985 when final judgment was entered against the defendants for RM 1,443,756.62. The defendants have appealed against that order which appeal had not been heard when the instant application came up for disposal.

The said interlocutory injunction order of 8 July 1985 was served on the defendants on 9 July 1985 and was also served on the various trade debtors of the defendants and on the defendants' bankers. There were no complaints by the defendants in respect of this until 12 September 1985 when the defendants filed their application to have the injunction set aside. No attempt was made in the affidavit filed in support of the application (by the defendants' Managing Director Ng Seng Wee) to explain the inordinate delay in filing the application to set aside the injunction. At the hearing Counsel for the defendants explained that the defendants were too engrossed with the O. 14 application and with filing their statement of defence and had no time to apply their minds to getting down to have the injunction set aside. I did not find that an acceptable explanation. In any event, all that Ng Seng Wee's affidavit contained were complaints of the hardship suffered by the defendants as a result of the injunction. The basis on which the plaintiffs sought and obtained the injunction including the contention that the plaintiffs feared that the defendants intended to abscond and that the directors of the company had disappeared and that even with the aid of professional private investigators their whereabouts could not be traced, were not challenged.

In the circumstances the application had to be and was dismissed with costs.

Also found at [1986] 1 CLJ 498